

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOSEPH WILLNER by his next friend MOSHE
WILLNER, on behalf of himself and all others
similarly situated,

Plaintiff,

- against -

ROBERT DOAR, as Commissioner of the New York
City Human Resources Administration/Department
of Social Services, ELDERPLAN, INC., NIRAV R.
SHAH, M.D., as Commissioner of the New York
State Department of Health, and ELIZABETH R.
BERLIN, as Executive Deputy Commissioner of
the New York State Office of Temporary and
Disability Assistance,

Defendants.

**NOTICE OF MOTION
TO DISMISS THE
FIRST AMENDED
CLASS-ACTION
COMPLAINT**

12-cv-1955 (RRM)(RER)

(Case designated E.C.F.)

PLEASE TAKE NOTICE, that upon the accompanying Declaration of Roderick L. Arz, dated February 22, 2013, and its exhibits, the accompanying Memorandum of Law in Support of the State Defendants' Motion to Dismiss the First Amended Class-Action Complaint, dated February 22, 2012, and all prior pleadings and proceedings herein, defendants NIRAV R. SHAH, M.D., as Commissioner of the New York State Department of Health ("NYS DOH"), and KRISTIN M. PROUD, as Acting Commissioner of the New York State Office of Temporary and Disability Assistance ("NYS OTDA")¹ (collectively, "State Defendants"), will move this Court before the Honorable Roslynn R. Mauskopf, United States District Judge, at the United States District Courthouse for the Eastern District of New York located at 225 Cadman Plaza East, Brooklyn, New York, at a date and time to be determined by the Court, for an order dismissing

¹ Kristin Proud as Acting Commissioner of NYS OTDA is the successor to Elizabeth Berlin as the Executive Deputy Commissioner, and is automatically substituted as a party. Fed. R. Civ. P. 25(d).

the First Amended Class-Action Complaint, dated May 29, 2012, and all claims asserted therein, in their entirety and with prejudice, together with such other and further relief as the Court deems just and proper, pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) on the grounds that the Court lacks jurisdiction over the subject matter of plaintiff's claims and that plaintiff's claims fail to state a claim upon which relief can be granted.

Dated: New York, New York
February 22, 2013

ERIC T. SCHNEIDERMAN
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Attorney for the State Defendants

By:

/s/

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